

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21113

Application 29998 of **James A. Carr**
 P.O. Box 1012
 Calistoga, CA 94515

filed on **August 26, 1991**, has been approved by the State Water Resources Control Board (SWRCB)
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source
Unnamed Stream

Tributary to
**Bidwell Creek thence Franz Creek thence
Maacama Creek thence the Russian River**

within the County of **Sonoma**

2. Location of point of diversion

By California Coordinate System in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
POD#1; North 344,500 feet and East 1,814,800 feet	NW ¼ of SW ¼	21*	9N	7W	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Irrigation	NW ¼ of SW ¼	21*	9N	7W	MD	6
Frost Protection		20*	9N	7W	MD	9
Recreation	SE ¼ of SE ¼	20*	9N	7W	MD	15
Fire Protection	NE ¼ of SE ¼					
					TOTAL	30

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 30 acre-feet per annum to be collected from December 15 of each year to March 31 of the succeeding year.

(0000005C)

6. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(0000005I)

7. The capacity of the reservoir covered under this permit shall not exceed 30 acre-feet.

(0000005N)

8. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

9. Complete application of the water to the authorized use shall be made by December 31, 2010.

(0000009)

10. The SWRCB reserves jurisdiction to impose conditions to conform this permit to SWRCB policy on use of water for frost protection. Action by the SWRCB will be taken only after notice to interested parties and opportunity for hearing.

(0000020)

11. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe, or alternative facility, to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence which substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043a)

12. Prior to the consumptive use of water under this permit, permittee shall properly install, and maintain, an in-line flow meter capable of measuring the instantaneous rate and cumulative amount of water diverted for use under this permit. The metering device(s) shall be installed between the reservoir and the place of use or any intervening diversion works or conveyance system, including, but not limited to, storage tanks and groundwater well pumping systems. Permittee shall maintain a record of the end-of-the-month meter readings. Permittee shall make these monthly records available to, or submit them whenever requested by, the Division of Water Rights.

(0060400)

13. No water shall be diverted pursuant to this permit until permittee has installed a device(s), satisfactory to the State Water Resources Control Board, which is capable of bypassing the entire stream flow outside the authorized diversion season. Prior to construction, permittee shall submit plans and specifications of the bypass device(s) and operating methods to the Chief of the Division of Water Rights for approval that demonstrate compliance with this term.

(0050400)

14. In accordance with Section 1601, 1603, and/or 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted until the permittee has entered into a stream bed alteration agreement with the Department of Fish and Game and/or the Department has determined that measures to protect fish and wildlife resources have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of the permittee.

(0140400)

15. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the SWRCB, made after notice to interested parties and opportunity for hearing.

(0000090A)

16. Permittee shall, prior to construction, obtain the required Sonoma County grading permit. Prior to any grading, permittee shall submit to the Chief of the Division of Water Rights, State Water Resources Control Board, an erosion control plan approved by the County of Sonoma.

(0450500)

17. Prior to any site preparation work for additional vineyards, the applicant shall comply with the requirements of the Sonoma County Vineyard Erosion and Sediment Control Ordinance.

(0450501)

18. Permittee shall, prior to any site preparation work for the planting of vineyards after the issuance of water right permit 29998, submit a revegetation plan for native oak trees that may be removed. The plan shall provide for a 3:1 replacement for oaks that are 4 inches in diameter breast high or greater, and maintained such that a survival rate of 75 % is achieved five years after planting. The plan shall include an inventory of the oaks to be removed, identification of the proposed planting

site(s), species to be planted, and how they will be protected and maintained in perpetuity. Oak trees used for revegetation shall be native to Sonoma County. Permittee shall submit the revegetation plan to the Chief, Division of Water Rights, for review and approval.

(0400502)

19. Permittee shall allow native species of vegetation to establish naturally around the perimeter of the reservoir. Livestock shall be excluded from access to the impoundment.

(0400503)

20. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0400504)

21. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than permittee would have used absent the appropriation authorized by this permit. Based on the information in the Division's files, riparian water has not been used in this place of use. Therefore, consistent with this term, permittee may not divert any water for use on the place of use authorized by this permit under basis of riparian right. With the Chief of the Division's approval, this information may be updated, and permittee may use water under basis of riparian on the authorized place of use, provided that permittee submits reliable evidence to the Chief of the Division quantifying the amount of water that permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Chief of the Division is hereby authorized to approve or reject any proposal by permittee to use water under the basis of riparian right on the place of use authorized by this permit.

(0560300)

22. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; and locally darkened midden soils containing some to the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; old trails; and structure and feature remains such as building foundations and dumps. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the applicant to evaluate the find and recommend appropriate mitigation. Project related activities in the area of the find shall resume only after the completion of the recommended mitigation, as approved by the Chief of the Division of Water Rights.

(0380500)

23. This permit is specifically subject to the prior right of Marie R. Rogers pursuant to Riparian Claim S009015. If, within two years after the construction of the permittee's dam and reservoir, the spring located near the southwest property corner of Marie R. Rogers' property, identified

during the State Water Resources Control Board field investigation conducted November 3, 1993, ceases to flow, permittee shall provide a water trough for Mrs., Rogers cattle at a site near the spring. The water trough shall be equipped with an automatic shut-off valve, which will provide water on demand. Water shall be released or pumped from permittee's reservoir to the trough and the maximum amount that the permittee shall be required to deliver is one-half (1/2) acre foot per year.

If, however, the spring is still flowing on September 1 of the second year following construction of the dam and reservoir, permittee's obligation to provide water under this permit condition shall terminate.

(0160800)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
- B. The amount authorized for appropriation may be reduced in the license if investigation warrants.
- C. Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.
- D. Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
- E. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action

will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

F. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

G. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

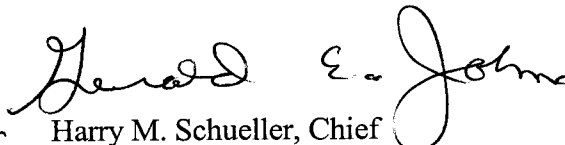
Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the

services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: OCT 18 2001

STATE WATER RESOURCES CONTROL BOARD

for 
Harry M. Schueller, Chief
Division of Water Rights